



Introduction to the National Employment Standards

Australia's new workplace relations system

From 1 July 2009, most Australian workplaces are governed by a new system created by the *Fair Work Act 2009*.

The Fair Work Ombudsman helps employees, employers, contractors and the community to understand and comply with the new system. We provide education, information and advice, investigate workplace complaints, and enforce relevant Commonwealth workplace laws.

As of 1 January 2010, the National Employment Standards (NES) replace the Australian Fair Pay and Conditions Standard. Together with modern awards (also from 1 January 2010), the NES make up a new safety net for employees covered by the national workplace relations system.

In addition to the NES, an employee's terms and conditions of employment generally come from an award or agreement. All references to an award or agreement in this fact sheet include modern awards, enterprise agreements, and award or agreement-based transitional instruments.

What are the 10 NES entitlements?

The NES are set out in the *Fair Work Act 2009* and comprise 10 minimum standards of employment. Each standard is covered in detail in separate fact sheets (see below), but in summary, the NES involve the following minimum entitlements:

- **Maximum weekly hours of work** – 38 hours per week, plus reasonable additional hours.
- **Requests for flexible working arrangements** – an entitlement allowing parents or carers of a child under school age, or of a child under 18 with a disability, to request a change in working arrangements to assist with the care of the child.
- **Parental leave and related entitlements** – up to 12 months unpaid leave per employee, plus a right to request an additional 12 months unpaid leave, plus other forms of maternity, paternity and adoption-related leave.
- **Annual leave** – four weeks paid leave per year, plus an additional week for certain shift workers.
- **Personal/carer's leave and compassionate leave** – 10 days paid personal/carer's leave, two days unpaid carer's leave as required, and two days compassionate leave (unpaid for casuals) as required.
- **Community service leave** – unpaid leave for voluntary emergency activities and leave for jury service, with an entitlement to be paid for up to 10 days for jury service.
- **Long service leave** – a transitional entitlement for employees as outlined in an applicable pre-modernised award, pending the development of a uniform national long service leave standard.
- **Public holidays** – a paid day off on a public holiday, except where reasonably requested to work.
- **Notice of termination and redundancy pay** – up to five weeks notice of termination and up to 16 weeks severance pay on redundancy, both based on length of service.
- **Provision of a Fair Work Information Statement** – must be provided by employers to all new employees, and contains information about the NES, modern awards, agreement-making, the right to freedom of association, termination of employment, individual flexibility arrangements, union rights of entry, transfer of business, and the respective roles of Fair Work Australia and the Fair Work Ombudsman.

Who do the NES apply to?

The NES apply to all employees covered by the national workplace relations system (however only certain entitlements apply to casual employees).

There are two NES entitlements that apply to all full-time and part-time employees, whether they are covered by the national workplace relations system or not.

These are:

- parental leave and related entitlements (this also applies to casual employees who have been employed for at least 12 months by an employer on a regular and systematic basis and with an expectation of ongoing employment)
- notice of termination.

However, only certain NES entitlements apply to casual employees, which are:

- two days unpaid carers leave and two days compassionate leave per occasion
- maximum weekly hours
- community service leave (except paid jury service)
- to reasonably seek a day off on a public holiday
- provision of the Fair Work Information Statement.

In addition, casual employees who have been employed for at least 12 months by an employer on a regular and systematic basis and with an expectation of ongoing employment are entitled to:

- make requests for flexible working arrangements
- parental leave.

How do the NES apply?

The NES apply to all employees covered by the national workplace relations system regardless of the applicable industrial instrument or contract of employment. Terms in awards, agreements, and employment contracts cannot exclude or provide for an entitlement less than the NES, and have no effect.

However, awards and agreements are specifically allowed to affect the operation of the NES in certain ways.

For example, they may specify terms that deal with:

- averaging an employee's ordinary hours of work
- the cashing out and taking of paid annual leave
- the cashing out of paid personal/carer's leave
- the substitution of public holidays
- situations in which redundancy pay entitlements do not apply.

They may also supplement the NES by providing entitlements that are more favourable for employees.

In addition, employers and award/agreement-free employees (meaning they are not covered by an award or agreement) may also make agreements that affect the operation of the NES in certain ways.

They may make agreements about the following:

- averaging of hours of work
- the cashing out or taking of paid annual leave
- the substitution of public holidays
- extra annual leave in exchange for foregoing an equivalent amount of pay
- extra personal/carer's leave in exchange for foregoing an equivalent amount of pay.

Otherwise, employment contracts can only have effect to the extent that they provide entitlements that are similar or more favourable to the employee.

An employer must not contravene a provision of the NES. A contravention of a provision of the NES may result in penalties of up to \$6,600 for an individual and \$33,000 for a corporation.

Further information

The Fair Work Ombudsman has published a fact sheet on each NES entitlement. For further information on a specific NES entitlement, please see the relevant fact sheets at www.fwo.gov.au

For further information, visit www.fairwork.gov.au or contact Fair Work Online **13 13 94**.

Contact us

Fair Work Online: www.fairwork.gov.au

Fair Work Infoline: **13 13 94**

Monday to Friday, between 8.00am–6.00pm

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